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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BYRON DALE BAKER, P.T.
518 Stanford Street
Vacaville, CA 95687

Physical Therapist License No. PT 7387

Respondent.

Case No. 1D 2002 62984

**FIRST AMENDED
A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about December 3, 1975, the Physical Therapy Board of California issued Physical Therapist License Number PT 7387 to Byron Dale Baker (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2004, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), under the authority of the following sections of the Business and Professions Code (Code).

Section 2609 of the Code states:

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

Section 2660 of the Code states:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

- (a) Advertising in violation of Section 17500.
- (b) Fraud in the procurement of any license under this chapter.
- (c) Procuring or aiding or offering to procure or aid in criminal abortion.
- (d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.
- (e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.
- (f) Habitual intemperance.
- (g) Addiction to the excessive use of any habit-forming drug.
- (h) Gross negligence in his or her practice as a physical therapist.
- (i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.
- (j) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.
- (k) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

(l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist.

(m) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood_borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, Hepatitis B, and other blood_borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Board of Dental Examiners of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood_borne infectious diseases.

Section 2661.5 of the Code states:

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decision.

(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license or approval of any person who has failed to pay all of the costs ordered under this section.


(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license or approval of any person who demonstrates financial hardship and who enters into a formal agreement with

the board to reimburse the board within that one year period for those unpaid costs.

(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.

4. Section 2660.1 of the Code states:


A patient, client, or customer of a licensee under this chapter is conclusively presumed to be incapable of giving free, full, and informed consent to any sexual activity which is a violation of Section 726.



Section 141 of the Code states:


(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.



Section 2305 of the Code states:

The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.



Section 726 of the Code states:

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

CAUSE FOR DISCIPLINE

(Discipline by Another State)

[Bus. & Prof. Code §§ 141, 2305 and 2660 (i)]



5. Respondent is subject to disciplinary action under sections 141, 2305 and 2660 (i) in that on January 12, 2001, the Oregon State Physical Therapy Licensing Board disciplined Respondent's physical therapy license. The circumstances are as follows:

6. On or about January 12, 2001, the Oregon State Physical Therapist Licensing Board issued an "Order Of Immediate Suspension" of Respondent's physical therapy license for engaging in a sexual relationship with a current patient in 1999. The Oregon Physical Therapy Licensing Board had received on January 5, 2001, a report of an evaluation performed by a psychologist that concluded that Respondent "appeared to remain at significant risk of reinitiation of violations of sexual boundaries within the patient/therapist context."

13. On or about May 17, 2001, Respondent entered into a Consent Order with the Oregon Physical Therapist Licensing Board, in which Respondent's Oregon Physical Therapist license was suspended for an indefinite period.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist License Number PT 7387, issued to Byron Dale Baker;
2. Ordering Byron Dale Baker to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/21/02.

Original Signed By Daniel Turner For
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

